TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 168.

WESTERN UNION TELEGRAPH COMPANY, PLAINTIFF IN ERROR,

vs.

SAMUEL CHILES.

IN ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF VIRGINIA.

FILED AUGUST 22, 1906.

(20,835.)

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SUPREME COURT OF THE UNITED STATES

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vs.

SAMUEL CHILES.

IN ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF VIRGINIA.

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1 In the Supreme Court of Appeals of Virginia, at Richmond.

THE WESTERN UNION TELEGRAPH COMPANY
v.
SAMUEL CHILES.

To the Honorable Judges of the Supreme Court of Appeals of Virginia:

The petitioner, the Western Union Telegraph Company, is aggrieved by a judgment of the Court of Hustings for the City of Portsmouth pronounced against it on the 25th day of July, 1906, in an action brought against it by Samuel Chiles for the recovery of the statutory penalty for alleged failure to deliver a telegraphic message.

A transcript of said judgment is presented herewith, and it shows the following case:

On the first day of September, 1904, one W. F. Hamburger, then in the City of Richmond, delivered to the telegraph company the message in question addressed to "Gunner Samuel Chiles, U. S. S. Albarenda, Navy Yard, Norfolk, Va.," for transmission and delivery to the plaintiff, which message was never received by him.

The proof shows that it was received at the office of the company in Portsmouth (near which place the navy yard is located) and was sent out for delivery by a messenger who testified that he delivered it to a seaman on board the Albarenda, then lying in the navy yard.

Demurrers were interposed to the original and amended declarations upon the ground that the State was without authority to impose or enforce a penalty for a violation of its statutes occurring
2 within the navy yard, which ground of demurrer was overruled, and the case coming on for trial the jury found a verdict in favor of the plaintiff for the statutory penalty of $100, which your petitioner moved to set aside as contrary to the law and the evidence, which motion was overruled, and the petitioner excepted. This exception is covered by Bill of Exception No. 3. Motion was then made in arrest of judgment, which motion was also overruled.

During the trial certain instructions were asked for by the plaintiff and granted by the court, the giving of one of which is the subject of Bill of Exception No. 1. The petitioner also asked for an instruction, which was refused, and this is embodied in its Bill of Exception No. 2.

The petitioner assigns the following errors;

First. The action of the court in overruling the demurrer to the original and amended declarations.

Second. The action of the court in granting the third instruction asked for by the plaintiff.

Third. The action of the court in refusing to grant the instruction asked for by the defendant;

Fourth. The action of the court in not setting aside the verdict and granting a new trial.

Fifth. The action of the court in not granting defendant's motion in arrest of judgment.

The case presents a constitutional question with respect to the exclusive jurisdiction of the United States over territory acquired by purchase and used by it, and this petition asks for a review of the rulings of the trial court upon this proposition.

The first, third, fourth, and fifth assignments of error are addressed to this point and will therefore be considered together.

The question involved is as to the right of the State to impose or enforce a penalty for a violation of its laws committed upon territory purchased by the United States, where the constitution has given the latter the right of exclusive legislative jurisdiction.

By paragraph seventeen of section eight of article one of the Constitution of the United States, Congress is given power "to exercise exclusive legislation over such district (not exceeding ten miles square) as may by cession of particular States and the acceptance of Congress, become the seat of government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock yards and other needful buildings."

3 The Norfolk Navy Yard, formerly known as the Gosport Navy Yard, was purchased by the United States under the provisions of the Act of Assembly passed January 25, 1800, and the Act of Assembly passed February 27, 1833, by the terms of which the Commonwealth transferred to the United States all the jurisdiction which it possessed over that territory, reserving only the right of its officers to execute process therein, and it has been used as a navy yard ever since that time.

Acts, 1800, p. 246, and 1832-33, p. 25.

When the title is thus acquired by purchase by consent of the State, the Federal jurisdiction is exclusive of all State authority. This follows from the declaration of the constitution that Congress shall have like authority over such places as it has over the district which is the seat of government; that is, the power of exclusive legislation in all cases whatsoever. Broader or clearer language could not be used to exclude all other authority than that of Congress; and that no other authority can be exercised over them has been the uniform opinion of Federal and State tribunals.

Fort Leavenworth R. R. Co. *v.* Lowe, 114 U. S. 525, 532.

The Federal jurisdiction being exclusive, the State could not impose a penalty, for a violation of any of its laws committed within the limits of the navy yard, and could not enforce such a penalty, that territory being as far beyond its jurisdiction as a foreign State and its penal laws having no extra-territorial force.

Telegraph Co. *v.* Pendleton, 122 U. S. 347.

In the case of Foley *v.* Shriver, 81, Va. 568, the plaintiff obtained a process against the National Soldiers Home as garnishee, and the assignee appeared and pleaded that the Home did not reside within

Elizabeth City County, and that the court had no jurisdiction. The court after citing the authorities says;

From the foregoing cases it is clear that no other legislative power than that of Congress can be exercised over lands within a State purchased by the United States with the consent of the State for one of the purposes designated, and that such consent, under the Constitution, operates to exclude all other legislative authority. If the United States has the right of exclusive legislation over the ceded lands, they also have the exclusive jurisdiction. The right of exclusive legislation gives exclusive jurisdiction. United States *v.* Cornell, *supra;* People *v.* Godfrey, 17 Johns, 225; Opinions Attorney General, 592. In this case the State Legislature having given the required consent, and the United States having purchased
4 the lands in question, the United States have acquired, under the Federal Constitution, exclusive jurisdiction over the ceded lands, and they are no longer a part of the State of Virginia and are not subject to the jurisdiction of the State courts. Persons residing there are not citizens of Virginia; the property situated there is not subject to the control or disposal of any State court, and the Circuit Court of Elizabeth City County is without jurisdiction within the said territory.

See also United States *v.* Cornell, 2 Mason, 60. *In re* Ladd, 74 F. R. 31.

It is submitted that the United States has the exclusive authority to legislate over this territory, and that the court erred in imposing the penalty in this case.

Plaintiff's Instruction No. 3, embodied in Bill of Exception No. 1, is erroneous in that it puts upon the telegraph company the burden of proving the agency of the party to whom the message is delivered. The statute provides that the message shall be delivered to the person to whom it is addressed, or his agent. It would be an utter impossibility for the company to prove agency, no matter how apparent it might be, and it is submitted that this instruction places too great a burden upon the defendant.

In addition to the question of jurisdiction, the fourth assignment of error should be sustained for the reason that the statute provides a penalty for a failure to deliver a telegraphic message only in case the addressee resides within the limits of the city or incorporated town wherein such station is, or the regulations of the company at such place require such delivery.

Pollard's Code, sec. 1294*h*.

In this case the station to which the message was addressed was Norfolk, and there was an utter failure of proof either of the residence of the plaintiff or of any regulation of the company requiring a delivery.

Wherefore the petitioner prays for a writ of error and supersedeas to said judgment, and that the same may be reversed and set aside.

And as in duty bound, it will ever pray.

WESTERN UNION TELEGRAPH CO.,
By HUGHES & LITTLE, *Its Attorneys.*

5 I, Robert M. Hughes, an attorney practising in the Supreme Court of Appeals of Virginia, do certify that there is in my opinion, sufficient matter of error in the accompanying and annexed transcript to render it proper that the same should be reviewed by the Supreme Court of Appeals.

ROBT. M. HUGHES.

Received August 11, 1906.

R. H. C.

SEPT. 4, 1906.

Writ of error and supersedeas allowed. Bond required in the sum of $200.00 conditioned according to law.

R. H. CARDWELL.

To Clerk of Supreme Court of Appeals, Richmond, Va.

VIRGINIA:

Pleas before the Court of Hustings for the City of Portsmouth, at the court-house thereof, on the 25th day of July, A. D. 1906.

SAMUEL CHILES, Plaintiff,
v.
WESTERN UNION TELEGRAPH COMPANY, Defendant.

Debt.

Be it remembered that heretofore, to-wit: On the 16th day of December, 1904, came the plaintiff, by his attorney, and sued out of the clerk's office of the said Court of Hustings for the City of Portsmouth a summons against the said defendant, which summons, with the return thereon, is in the words and figures following, to-wit:

Summons.

The Commonwealth of Virginia, to the Sergeant of the City of Portsmouth, Greeting:

You are hereby commanded to summon Western Union Telegraph Company to appear at the clerk's office of the Court of Hustings for the City of Portsmouth, on the 3rd Monday in December, 1904, to answer Samuel Chiles of a plea of debt. Damages $100. And have then and there this summons.

6 Witness, C. T. Phillips, clerk of our said court, at his office, this 16th day of December, 1904, in the 129th year of the Commonwealth.

(Signed) C. T. PHILLIPS, *Clerk,*
By E. THOMPSON, *D. C.*

Return.

"Executed on this 17th day of December, 1904, by delivering a true copy hereof to Edward S. Burgess agent of the Western Union Telegraph Company in the City of Portsmouth, Virginia, in which said city the principal office of the said Western Union Telegraph Company is located. Not finding any other officer of said Western Union Telegraph Company in the said City of Portsmouth, Virginia, upon which service could be made."

(Signed) WMSON. SMITH, *Sergt.*

And at another day, to-wit: At rules held in the clerk's office of said court on the third Monday in December, 1904, came the plaintiff, by his attorney, and filed his declaration against the defendant, which declaration is in the words and figures following, to-wit:

The Court of Hustings for the City of Portsmouth, Va., Samuel Chiles plaintiff, complains of the Western Union Telegraph Company, a corporation, defendant, of a plea that it render unto the said plaintiff the sum of one hundred dollars, which it owes to and unjustly detains from him for this: that W. F. Hamburger, on the first day of September, 1904, in the City of Richmond, Va., filed with said defendant company, through its agents, at its office in Richmond, Va., a telegram to be transmitted to said plaintiff, addressed to him, U. S. S. Alberanda, Navy Yard, Norfolk, Va., and complied with the regulations of the company as to the payment of the charges thereon, and the said defendant company received the said message and undertook and agreed to transmit the same faithfully and impartially and as promptly as practicable, in order of delivery to the said plaintiff, on the U. S. S. Alberanda in the Navy Yard addressed at Norfolk, Va., that even though the official address of the Navy Yard is Norfolk, Va., it is located in or adjacent to the City of Portsmouth, Va., a short distance from Norfolk, Va., of which said defendant company were aware, and they were in the habit of transmitting messages so addressed, to Portsmouth, Virginia, for delivery in the Navy Yard and upon vessels lying in said Navy Yard.

And the plaintiff avers that it was the duty of the said de-
7 fendant company to transmit the said message faithfully and impartially, yet the said plaintiff avers that the said defendant company wholly failed to discharge its said duty in this regards to the plaintiff, and did not faithfully transmit the said message to the said plaintiff on the U. S. S. Alberanda in the navy yard at Portsmouth, Va., whereby and in consequence of such breach of duty on its part, and of the failure to transmit faithfully the said message as aforesaid, the said defendant company became and are indebted, under the statute made and provided, in such cases, in the sum of one hundred dollars, to the plaintiff, to be paid to the plaintiff whenever the said defendant should be thereunto afterwards requested.

And the plaintiff further avers that the said message was received by said defendant company at its office in Portsmouth, Va., for de-

livery in the navy yard, and it was the duty of the said defendant company to deliver the said message to the said plaintiff, upon the U. S. S. Alberanda, in the navy yard in Portsmouth, Virginia, as promptly as practicable, and that it was practicable to deliver the same to the said plaintiff upon the U. S. S. Alberanda, in the navy yard at Portsmouth, Va., on the first day of September, 1904, yet the plaintiff avers that the defendant company wholly failed to discharge its said duty in this regard, and did not deliver to the said plaintiff upon the U. S. S. Alberanda, in the navy yard at Portsmouth, Va., the said message at all on the said first day of September, 1904, whereby and in consequence of such breach of duty on its part, and of its failure to deliver the said message to the said plaintiff upon the U. S. S. Alberanda, in the navy yard at Portsmouth, Va., as promptly as practicable, the said defendant company became indebted under the statute made and provided in such cases, to the plaintiff in the sum of one hundred dollars, above demanded, to be paid to the said plaintiff whenever the said defendant company should be thereunto afterwards requested.

Yet the said defendant, although often requested, has not as yet paid to the plaintiff the sums of money above demanded, nor any part thereof, but the same to pay hath hitherto failed and refused, to the damage of the plaintiff $100. And therefore he brings his suit.

W. D. STOAKLEY, *p. q.*

And at another day, to-wit: At the Court of Hustings for the City of Portsmouth on the 5th day of January, 1905.

8 At this day came the plaintiff, by his attorney, and Hughes and Little, who appeared specially for the defendant for the purpose of moving the court to quash the return on the process in this suit, upon the ground of insufficiency of notice, and the motion having been accordingly made and which being heard, the court doth quash the return on the process in this suit, and doth remand this cause to rules for further proceedings to be had therein.

And at another day to-wit: In the clerk's office of the Court of Hustings for the City of Portsmouth, on the 7th day of January, 1905, came the plaintiff, by his attorney, and sued out an alias summons against the said defendant, which summons, with the return thereon, is in the words and figured, to-wit:

Summons.

The Commonwealth of Virginia, to the Sergeant of the City of Portsmouth, Greeting:

You are hereby commanded, as heretofore you have been commanded, to summon Western Union Telegraph Company to appear at the clerk's office of the Court of Hustings for the City of Portsmouth, on the 1st Monday in February, 1905, to answer Samuel Chiles of a plea of debt, damages $100. And have then and there this summons.

Witness, C. T. Phillips, clerk of our said court, at his office, this 7th day of January, 1905, in the 129th year of the Commonwealth.

(Signed) C. T. PHILLIPS, *Clerk*,
By E. THOMPSON, *D. C.*

Return.

"Executed on this 9th day of January, 1905, by delivering a true copy thereof to Edward S. Burgess, agent of the Western Union Telegraph Company in the City of Portsmouth, Virginia, in which said city the principal office of the said Western Union Telegraph Company is located not finding any other officer of said Western Union Telegraph Company in the said City of Portsmouth, Virginia, upon which service could be made."

(Signed) WMSON. SMITH, *Sergt.*

And at another day, to-wit: At the Court of Hustings for the City of Portsmouth on the 6th day of April, 1905.

9 At this day came the parties by their attorneys and the defendant, by its attorney, filed its demurrer, and the grounds thereof, to the plaintiff's declaration and to each and every count thereof, and the plaintiff joined in said demurrer, and on the motion of the defendant, who pleaded "*Nil Debit*," to which the plaintiff replied generally, and upon which said plea issue is joined, it is ordered that the judgment entered in the office at the rules be set aside.

The demurrer of the defendant mentioned in the above order is in the words and figures following, to-wit:

The defendant, by its attorneys, comes and says that the said declaration, and each count thereof, is insfficient in law. And it assigns the following grounds of demurrer:

First. That the said declaration fails to set out a state of facts which would entitle this plaintiff to recover the penalty sued for.

Second. That the plaintiff is not entitled under the statute to maintain an action for the penalty therein provided, for failure to transmit the message in question, as claimed in the first count of said declaration.

Third. That as to the second count the declaration does not set out any circumstances imposing any duty upon the defendant for a breach of which the plaintiff would be entitled to recover the penalty therein claimed.

Fourth. That said declaration shows that the place at which the message was to be delivered was beyond the jurisdiction of this State, and at a point at which neither the State nor this honorable court had jurisdiction to impose or enforce the penalty sued for.

HUGHES & LITTLE, *p. d.*

And at another day, to-wit: At the Court of Hustings for the City of Portsmouth on the 20th day of April, 1905.

At this day came again the parties by their attorneys and the court having fully heard the demurrer of the defendant to the plaintiff's declaration and to each and every count thereof, heretofore filed

herein, doth sustain the same, and thereupon the plaintiff moved the court for leave to file an amended declaration, which leave being granted, the same is accordingly filed, and on motion of the defendant this cause is continued.

The amended declaration mentioned in the above order is in the words and figures, following to-wit:

Court of Hustings of the City of Portsmouth, Va., Rules ——, 1904.

10 Samuel Chiles, plaintiff, complains of the Western Union Telegraph Company, a corporation, defendant, of a plea that it render upon the plaintiff the sum of one hundred dollars, which it owes to and unjustly detains from him for this, to-wit: that heretofore to-wit, on the first day of September, 1904, W. F. Hamburger, who was in the City of Richmond, Virginia, then and there filed with the defendant company, a corporation doing the business of receiving and transmitting messages for compensation, in the State of Virginia, and complied with the regulations of the company as to the payment of the charges thereon, a message addressed to the plaintiff U. S. A. Albarenda Navy Yard, Norfolk, Va., to be forwarded and delivered to the said plaintiff as addressed, said plaintiff being then and there at the place addressed.

And the plaintiff avers that the said defendant company received the said message and undertook and agreed to forward and deliver the same promptly to the said plaintiff on the U. S. S. Albarenda which said ship was then lying at the dock in the navy yard, Norfolk, Va., the regulations of the company as to the payment of the charges therefor having been complied with.

And the plaintiff avers that it was the duty of the said defendant company to forward the said message promptly, yet the said plaintiff avers that the defendant wholly failed to discharge its said duty in this regards to the plaintiff, and did not promptly forward the said message to the said plaintiff on the U. S. S. Albarenda, in the navy yard at Norfolk, Va., whereby and in consequence of such breach of duty on its part, and of its failure to promptly forward the said message as aforesaid, the said defendant company became indebted, under the statute in such cases made and provided, to the plaintiff in the sum of one hundred dollars to be paid to the plaintiff whenever the said defendant should be therein afterwards requested.

And the plaintiff further avers that the navy yard which is officially known and addressed as at Norfolk, Va., is some three or four hundred yards from the City of Norfolk, Virginia, and lies in, or adjacent to the City of Portsmouth, Virginia, that the said defendant company are aware of this and that the regulations of the company require the delivery of messages, addressed Navy Yard, Norfolk, Va., in said navy yard and the delivery to ships lying in said yard.

That the defendant company for reasons of their own forward message so addressed to Portsmouth, Virginia, for delivery from that office.

11 The plaintiff avers that said message was received at the office of said defendant company at Portsmouth, Virginia, for

delivery and that it became and was the duty of the defendant company to deliver the said message to the said plaintiff on the U. S. S. Alberanda, in the navy yard (officially known and addressed as Norfolk, Va.) at Portsmouth, Virginia, as promptly as practicable, and that it was practicable to deliver the same to the said plaintiff on the U. S. S. Albarenda, in the navy yard at Portsmouth, Virginia, on the 1st day of September, 1904, yet the plaintiff avers that the defendant company wholly failed to discharge its said duty in this regard, and did not deliver the said message to the said plaintiff on the U. S. S. Albarenda, in the navy yard at Portsmouth, Virginia, at all on the 1st day of September, 1904, whereby and in consequence of such breach of duty on its part and of its failure to deliver the said message to the said plaintiff on the U. S. S. Albarenda, in the navy yard in Portsmouth, Va., as promptly as practicable, the said defendant company became indebted under the statute made and provided in such cases to the plaintiff in the sum of one hundred dollars, above demanded to be paid to the plaintiff whenever the said defendant company should be thereunto afterwards requested.

Yet the said defendant, although often requested, has not as yet paid to the plaintiff the sums of money above demanded, nor any part thereof, but the same to pay has hitherto wholly failed and refused, to the damage of the plaintiff $100. And therefore he brings his suit*e*.

W. D. STOAKLEY, *p. q.*

And at another day, to-wit: At the Court of Hustings for the City of Portsmouth on the 6th day of July, 1905.

At this day came again the parties by their attorneys and the defendant, by its attorney, filed its demurrer, and the grounds thereof, to the plaintiff's declaration and to each and every count thereof, and the plaintiff joined in said demurrer, and on motion of the defendant, who pleaded *"Nil Debit,"* to which the plaintiff replied generally, and upon which said plea issue was joined, it is ordered that the judgment entered in the office at the rules be set aside.

The demurrer of the defendant mentioned in the above order is in the words and figures following, to-wit:

The defendant, by its attorneys, comes and says that the said declaration, and each count thereof, is insufficient in law. And it assigns the following grounds of demurrer:

12 First. That the said declaration, and each count thereof, are too vague, uncertain and indefinite to enable the defendant to properly concert its defence.

Second. That the first count of said declaration, and the message therein mentioned, do not indicate anything to show a necessity for forwarding as required by the statute.

Third. That the second count of said declaration does not show the breach of any duty on the part of the said defendant under the statute.

Fourth. That said declaration shows that the place at which the message was to be delivered was beyond the jurisdiction of this State,

and at a point at which neither the State nor this honorable court had jurisdiction to impose or enforce the penalty sued for.

HUGHES & LITTLE, *p. d.*

And at another day, to-wit At the Court of Hustings for the City of Portsmouth on the 20th day of July, 1905.

At this day came again the parties by their attorneys, and the court having fully heard the demurrer of the defendant to the plaintiff's declaration and to each and every count thereof, heretofore filed herein, doth sustain the same, and thereupon the plaintiff moved the court to be allowed to file an amended declaration, which leave the court granted, and this cause is continued.

The amended declaration mentioned in the above order is in the words and figures following, to-wit:

Court of Hustings for the City of Portsmouth, Va.

Samuel Chiles, plaintiff, complains of the Western Union Telegraph Company, a corporation, defendant, of a plea that it render unto the said plaintiff the sum of one hundred dollars which it owes to and unjustly detains from him for this, to-wit: That heretofore to-wit: on the 1st day of September, 1904, W. F. Hamburger, who was then in the City of Richmond, Va., then and there filed with the defendant company a corporation doing the business of receiving and transmitting messages for compensation, in the State of Virginia, and complied with the regulations of the company as to the payment of the charges thereon, a message, in the following words and figures, viz.:

13 RICHMOND, VA., *Sept.* 1, 1904.

To Gunner Samuel Chiles, U. S. S. Albarenda, Navy Yard, Norfolk, Va.:

Left for home tonight, saw your orders.

W. F. HAMBURGER.

or in words of like purport, plaintiff being unable to verify the language and c. of the message it not having been received by him at all, to be forwarded and delivered to the said plaintiff as addressed, said plaintiff being then and there at the place addressed.

And the plaintiff avers that the said defendant company received the said message and undertook and agreed to forward and deliver the same promptly to the said plaintiff on the U. S. S. Albarenda, which said ship was then lying at the dock in the navy yard Norfolk, Va., the regulations of the company as to the payment of the charges therefor having been complied with.

And the plaintiff avers that it was the duty of the said defendant company to forward the said message promptly, yet the said plaintiff avers that the defendant wholly failed to discharge its said duty in this regards to the plaintiff, and did not promptly forward the said message to the said plaintiff on the U. S. S. Albarenda, in the navy yard at Norfolk, Va., whereby and in consequence of such breach

of duty on its part, and of its failure to promptly forward the said message as aforesaid, the said defendant company, became indebted, under the statute in such cases made and provided, to the plaintiff in the sum of one hundred dollars to be paid to the plaintiff whenever the said defendant should be thereunto afterwards requested.

And the plaintiff further avers that the navy yard which is officially known and addressed as at Norfolk, Va., is some three or four hundred yards from the City of Norfolk, Va., and lies in or adjacent to the City of Portsmouth, Va. That the said defendant company are aware of this and that the regulations of the company require the delivery of messages addressed Navy Yard Norfolk, Va., in said navy yard lying in or adjacent to the City of Portsmouth, Va., and to the ships lying in said yard.

And further that the defendant company for reasons of their own forward messages so addressed to Portsmounth, Va., for delivery from that office.

The plaintiff avers that said message was received at the office of said defendant company at Portsmouth, Va., for delivery and that it became and was the duty of the defendant company to deliver the said message to the said plaintiff on the U. S. S. Albarenda,
14 in the navy yard (officially known and addressed as Norfolk, Va.,) at, or adjacent to the City of Portsmouth, Va., as promptly as practicable, and that it was practicable to deliver the same to the said plaintiff on the U. S. S. Albarenda, in the navy yard, at or adjacent to the City of Portsmouth, Va., on the first day of September, 1904, yet the plaintiff avers that the defendant company wholly failed to discharge its said duty in this regard, and did not deliver the said message to the said plaintiff on the U. S. S. Albarenda in the navy yard in or adjacent to the City of Portsmouth, Va., as promptly as practicable, the said defendant company became indebted under the statute made and provided in such cases to the plaintiff in the sum of one hundred dollars, above demanded to be paid to the plaintiff whenever the said defendant should be thereunto afterwards requested.

Yet the said defendant, although often requested, has not as yet paid to the plaintiff the sums of money above demanded, nor any part thereof, but the same to pay has hitherto wholly failed and refused to the damage of the plaintiff $100. And therefore he brings his suit.

W. D. STOAKLEY, *p. q.*

And at another day, to-wit: At the Court of Hustings for the City of Portsmouth on the 26th day of October, 1905.

At this day came again the parties by their attorneys and the defendant, by its attorney, filed its demurrer, and the grounds thereof, to the plaintiff's second amended declaration and to each and every count thereof, and the plaintiff joined in said demurrer, and on the motion of the defendant, who pleaded *"Nil Debit,"* to which the plaintiff replied generally, and upon which said plea issue is joined, it is ordered that the judgment entered in the office at the rules be set aside.

The demurrer of the defendant mentioned in the above order is in the words and figures following, to-wit:

The defendant, by its attorneys, comes and says that the said second-amended declaration, and each count thereof, is insufficient in law, and assigns the following grounds of demurrer:

1. That the said second-amended declaration and each count thereof are too vague, uncertain and indefinite to enable the defendant to properly concert its defence.

2. That the first count of said second-amended declaration does not show that the said message ever arrived at a point from which it was to be forwarded, as required by the statute.

15 3. That the second count of the said second-amended declaration does not show the breach of any duty on the part of the defendant under the statute.

4. That the said second-amended declaration shows that the place at which the message was to be delivered was on board a Government vessel at a yard which is under the jurisdiction and control of the United States, and neither the State nor this honorable court has jurisdiction to impose any penalty for failure to deliver a message at such place.

HUGHES & LITTLE, *p. d.*

And at another day, to-wit: At the Court of Hustings for the City of Portsmouth on the 11th day of July, 1906.

At this day came again the parties by their attorneys and a jury, to-wit: C. C. Williams, Clyde E. West, N. Mitchell Brown, Harry L. Alexander, Joseph A. Berman, Chas. Dunnevant and W. D. Allen, who being duly sworn the truth to speak upon the issue joined and having fully heard the evidence and argument of counsel, retired to their room to consult of their verdict and after some time returned into court having found the following verdict: "We the jury find for the plaintiff and assess his damages at ($100.00) one hundred dollars;" whereupon the defendant, by its attorney, moved the court to set aside the verdict rendered herein and grant it a new trial upon the ground that the said verdict is contrary to the law and the evidence, which motion being heard the court doth overrule the same, to which ruling of the court, the defendant, by its attorney, excepted; and thereupon the defendant, by its attorney, saith that judgment ought not to be given on the verdict in this cause, because of errors apparent upon the record and because it appears that the alleged default on the part of the defendant, if any, occurred within the limits of the territory ceded by the State of Virginia to and purchased by the United States for use as a navy yard, under the terms of an act of the General Assembly passed on the 25th day of January, 1800, and an act of the General Assembly passed on the 27th day of February, 1833, by which acts of cession the Commonwealth of Virginia transferred to the United States of America all of its jurisdiction over said territory except the right to execute process within said jurisdiction, and said Commonwealth of Virginia is therefore without authority to impose on enforce a penalty for violation of a statute of said Commonwealth committed within such terri-

tory, the United States having the exclusive jurisdiction there-
16 over under clause 17 of sec. 8 of article 1 of the Constitution of the United States, which motion being heard the court doth overrule the same, to which ruling of the court, the defendant, by its attorney, excepted; therefore it is considered by the court that the plaintiff recover against the defendant one hundred dollars, with interest thereon to be computed after the rate of six per centum per annum, from the 11th day of July, 1906, till paid, his damages assessed by the jury in this cause, and his costs by him about his suit in this behalf expended.

And the said defendant in mercy, &c.

And now at this day, to-wit: At the Court of Hustings for the City of Portsmouth on the 25th day of July, 1906.

At this day came again the parties by their attorneys and at the instance of the defendant, who desires to present a petition for a writ of error and supersedeas to the judgment entered in this cause, execution thereof is suspended for the period of sixty days when the said defendant or some one for it, shall give bond before the clerk of this court, with surety to be approved by the said clerk, in the penalty of one hundred and fifty dollars, payable to the plaintiff in this cause, with a condition reciting said judgment and the intention of said defendant to present such petition and providing for the payment of all such damages as any person may sustain by reason of such suspension in case a supersedeas to such judgment should not be allowed and be effectual within the time above specified.

Be it remembered that on the trial of this case the defendant, by its attorney, excepted to certain rulings and judgment of the court and tendered its several bills of exceptions, marked No. 1, No. 2 and No. 3, which are this day severally signed and sealed by the judge of this court and ordered to be filed and made a part of the record of this case.

The defendant's Bill of Exceptions No. 1, referred to in the foregoing order, is in the words and figures following to-wit:

Be it remembered that on the trial of this cause the court, on motion of the plaintiff, gave the following instructions:

No. 1.

The court instructs the jury that if you believe from the evidence that the defendant failed to discharge its duty by not delivering as promptly as practicable the said telegram you must find for the plaintiff.

17 No. 2.

The court instructs the jury that the penalty prescribed by the statute for the failure of a telegraph company to deliver as promptly as practicable a telegram or dispatch is one hundred dollars to be paid either to the party sending the telegram or dispatch or to the party to whom it is addressed either that may sue for it and that he who sues is not compelled to show that he has been damaged by the failure to receive the telegram.

No. 3.

The court instructs the jury that it is the duty of a telegraph company to deliver a telegram to the addressee or his agent and the agency must be proven by the company if they assert the delivery to any one other than the addressee.

And on motion of the defendant, the court gave the following instruction:

The court instructs the jury that if they believe from the evidence that the message in question was forwarded or delivered as promptly as practicable to the addressee, or his agent, they must find for the defendant.

To the giving of which third instruction offered by the plaintiff the defendant, by counsel, then and there objected, but the court overruled the said objection and granted said instruction, to which action of the court the defendant, by its counsel, then and there excepted, and now tenders this its bill of exceptions which it prays may be signed, sealed and made a part of the record in this cause, and the same is done accordingly.

Reference is hereby made to the defendants Bill of Exceptions No. 3, containing the evidence in the case, which is hereby made a part of this bill of exceptions.

J. F. CROCKER, *Judge.* [SEAL.]

July 25, 1906.

The defendant's Bill of Exceptions No. 2, referred to in the foregoing order, is in the words and figures following, to-wit:

Be it remembered, that on the trial of this cause, the defendant moved the court to instruct the jury as follows:

"Even if the jury believe that the defendant failed to forward or to deliver the message in question as promptly as practicable, yet, if they also believe that such default occurred within the limits of the territory embraced within the Government Navy Yard
18 known as the Norfolk Navy Yard, or the Gosport Navy Yard, they are instructed that the United States of America, having purchased such property for use as a navy yard with the consent of the Commonwealth of Virginia, under the seventeenth clause of the first article of the Constitution of the United States and under the terms of the acts of cession from the Commonwealth of Virginia to the United States, it obtained exclusive legislative jurisdiction over such territory, and the Commonwealth of Virginia has no authority to impose or enforce a penalty for a violation of its statutes committed within such territory, and they must find for the defendant."

But the court refused to grant such instruction, to which action of the court the defendant, by counsel, excepted, and now tenders this its bill of exceptions which it prays may be signed, sealed and made a part of the record in this cause, and the same is done accordingly.

Reference is hereby made to the defendant's Bill of Exceptions No. 3, containing the evidence in the case, which is hereby made a part of this bill of exceptions.

J. F. CROCKER, *Judge.* [SEAL.]

July 25, 1906.

The defendant's Bill of Exceptions No. 3, referred to in the foregoing order, is in the words and figures following, to-wit:

Be it remembered, that on the trial of this case, after the evidence had been submitted and the instructions given, and after the case had been submitted to the jury, the jury retired and brought in a verdict in the words and figures following, to-wit: "We, the jury, find for the plaintiff and assess his damages at one hundred dollars. C. C. Williams, foreman."

And thereupon the defendant moved the court to set aside the verdict of the jury and grant it a new trial, on the ground that the same was contrary to the law and the evidence, but the court refused to set aside the said verdict and grant the defendants a new trial and proceeded to enter judgment thereon, to which action of the court the defendant, by its counsel, at the time of such ruling, excepted, and now tenders this, its bill of exceptions, which it prays may be signed, sealed and made a part of the record in this cause, and the same is done accordingly.

And the court certifies that the following is the evidence which was adduced at the trial of the cause, and was all the evidence which was adduced.

J. F. CROCKER, *Judge*. [SEAL.]

July 25th, 1906.

19 SAMUEL CHILES
v.
WESTERN UNION TELEGRAPH COMPANY.

Evidence.

Before Hon. J. F. Crocker and Jury, Portsmouth, Virginia, July 11, 1906.

Present: W. D. Stoakley, Esq., for the plaintiff; H. H. Little, Esq., for the defendant.

After the opening statements, by Mr. Stoakley, on behalf of the plaintiff, and by Mr. Little, on behalf of the defendant, the plaintiff, to sustain the issue on his part, introduced the following testimony:

The deposition of Samuel Chiles was read to the court and jury, and is in the words and figures following, to-wit:

Deposition of Samuel Chiles, taken before me, E. B. Lewis, a notary public, for the Corporation of the City of Norfolk, Virginia, on February 21st, 1906, pursuant to the annexed notice, in the case wherein Samuel Chiles is plaintiff and the Western Union Telegraph Company is defendant, depending in the court of Hustings for the City of Portsmouth, Va.

Present: W. D. Stoakley, for plaintiff; H. H. Little, for defendant.

SAMUEL CHILES, first being duly sworn, testified as follows:

Examined by Mr. STOAKLEY:

Q. Mr. Chiles, will you please state your name, age and occupation.

A. Samuel Chiles; age, 31; occupation, naval officer.

Q. Mr. Chiles, where were you, if you remember, September 1st, 1904?

A. At the Navy Yard aboard the Abarenda.

Q. Where is this Navy Yard?

A. The Navy Yard of Norfolk, Va.

Q. Where is it located?

A. In Portsmouth, Va.

Q. Is there a Navy Yard in Norfolk?

A. No.

Q. Did you have sent to you by Mr. W. H. Hamburger, from Richmond, Va., September 1, a message?

A. I did.

Q. Did you receive this message?

A. No.

Q. How did you know it was sent?

A. I met Mr. Hamburger in Fredericksburg two or three days following that, I don't remember the exact date and he told me at that time that he had sent me a telegram from Richmond.

Objection made to the second and third preceding questions and answers, and motion made to strike out on the ground that it appears from this last answer of the witness, that the message being sent to him is hearsay.

Q. Mr. Chiles, have you any other knowledge upon which to base your charge that you know that this telegram was sent to you?

A. Yes.

Q. What other knowledge is it, if any?

A. A copy of the telegram shown me by the operator at Portsmouth, upon my request, and in the presence of my wife.

Same objection and motion to strike out.

Q. Mr. Chiles, did you ever receive this message?

A. No.

Q. Were you on the Abarenda at this time, September 1st, and

could you have been reached if a message had been sent to you on the Abarenda?

A. Yes.

Q. Did any one authorized by you receive this telegram?

A. No.

Q. Have you ever been able to find out if it was delivered to any one?

The question is objected to for the reason that he never made any effort to ascertain.

A. I have repeatedly made inquiry to those to whom the telegram would be delivered.

Q. Then do I understand that you inquired of others on
21 ship to whom the telegram would probably been delivered, if not delivered to you, whether this telegram was ever delivered to them or not?

A. Yes, I had made those inquiries.

Q. And you now say that you have not been able to find any one to whom the telegram was ever delivered?

A. I have not.

Q. Were you ever advised by any one that this telegram was delivered to you, or that the telegraph company held your receipt for delivery of this telegram?

A. Yes.

Q. Who advised you of this?

A. I presume it was the operator at the Portsmouth office, a man employed in that office.

Q. Did he show you any receipt purporting to be by you for the delivery of this telegram?

A. He did.

Q. Did you sign this receipt?

A. No.

Q. Were you able to recognize the signature of your name for this telegram as being that of any one known to you?

A. No, I was not.

Q. And you will positively state that you did not sign for the receipt of this telegram?

A. I most emphatically will.

Q. Were you expecting this telegram?

A. Yes.

Q. Were you where you could be reached by the messenger from the telegraph office with the delivery of the telegram?

A. Yes.

Cross-examination.

By Mr. LITTLE:

Q. Were you on board the Abarenda all day that day?

A. Yes.

Q. You did not leave the ship that day?

A. No.

Q. Whereabouts were you on board that day?
A. In my state-room and on the quarter deck.
Q. What time were you in your state-room?
A. Various times during the day?
Q. Were you on duty?
A. No.
Q. Were you in your state-room most of the time, or on the quarter deck?
A. On the quarter deck.
22 Q. Where were you during the afternoon of that day?
A. I was speaking of the entire day when I spoke of that time.
Q. You mean you were on the quarter deck and in your state-room off and on during the afternoon?
A. Yes.
Q. What was going on on the quarter deck?
A. I was looking for the messenger boy with the telegram.
Q. Was that the only thing you had to do that afternoon?
A. Yes.
Q. Until how late in the afternoon did you look for him?
A. About eleven o'clock at night.
Q. On the quarter deck?
A. No, on the quarter deck until about six o'clock.
Q. How many men were on board the Abarenda at that time?
A. About seventy.
Q. All told?
A. As near as I can remember.
Q. Do you have a marine guard on?
A. We had men detailed for work usually assigned to marines.
Q. Where did your boarding ladder reach to from the wharf to the ship?
A. To the ship's side.
Q. Whereabouts?
A. A little *abaft* the midship line.
Q. Was there a marine stationed aside of this gangway?
A. There was a man stationed there, this person doing the same duty usually assigned to a marine.
Q. Did that gangway lead to the upper deck or to the main deck?
A. The upper deck and also the main deck.
Q. A messenger, in order to deliver a message to you, would have had to come aboard by this gangway and have hunted over the ship until he found where you were located?
A. No.
Q. What would he have done?
A. Asked the man stationed at the gangway where I could be found, or the officer of the deck who was on duty at that time, and in plain sight of any one coming over the gangway.
Q. Would the man at the gangway, or the officer on deck know where to locate you on board ship when you were off duty?
A. They would.
Q. How?

A. For the reason that I was on the quarter deck and in
23 sight the greater part of the time, and when not there, in my room, where the officer would first look for me, or a messenger sent by him.

Q. He would then have known you were on the quarter deck if he had happened to see you there?

A. Yes.

By Mr. STOAKLEY:

Q. Mr. Chiles, when you were shown what purported to be your signature at this time, did you ask to see the boy who was supposed to have delivered it?

Objected to for the reason that it is not in rebuttal and not in response to anything brought out in the cross examination.

A. I did.

Motion made to strike out the answer for the reason above stated.

Q. Did you see him?

Objected to for the same reason.

A. I did not.

Q. Why not?

Same objection.

A. The gentleman there whom I spoke to in the telegraph office, said he had some trouble with this messenger and he had been discharged.

Question and answer objected to and motion made to strike out not being in rebuttal and hearsay and is no part of *res gestæ*.

By Mr. LITTLE:

Q. Who was this man?

A. Some one in authority in this telegraph office.

Q. How do you know it was some one in authority?

A. I asked to see the agent or manager for that office and this gentleman replied that he was the person.

Motion made to strike out for the above —.

SAMUEL CHILES.

24 NOTE.—During the reading of the deposition of Samuel Chiles, the objections made at the time of the taking of the same were passed upon by the court as follows:

1st objection sustained, the court being of opinion that the question called for hearsay testimony.

2nd objection overruled.

3rd objection waived by counsel for defendant.

4th objection overruled.

5th objection overruled.

6th objection overruled.

7th objection:

By the COURT: I will allow that to go for the purpose of explaining he was not there and not accessible.

8th objection overruled.

Whereupon the plaintiff rested his case, and the defendant, to sustain the issue on its part, introduced the following evidence:

E. E. BURGESS, being duly sworn, testified as follows:

Examined by Mr. LITTLE:

Q. What is your occupation?

A. I am office manager of the Western Union at Portsmouth.

Q. Did you see this man Chiles when he came to inquire about this message?

A. I did.

Q. He stated in his testimony, which was taken some time ago, that you said you had trouble with this boy, and that he had been discharged. Will you state whether or not that is a fact?

A. That is an error. The boy left the service of the company to go to school.

Q. You did not tell him that the boy had been discharged?

A. Not that I remember of.

Q. As a matter of fact he had not been?

A. No, sir.

No cross examination.

L. H. CHERRY being duly sworn, testified as follows:

Examined by Mr. LITTLE:

Q. Were you employed by the Western Union Telegraph
25 Company as messenger in Portsmouth in September, 1904?

A. Yes, sir.

Q. Do you remember carrying a message addressed to Sam Chiles to a steamship?

A. I remember carrying one on board the Abarenda, and a sailor signed his name to the sheet.

Q. Who was the message to?

A. Samuel Chiles.

Q. What time of day was it when you took it there?

A. At night.

Q. You took it on board ship?

A. Yes, sir.

Q. Did you go up the gangway to the ship?

A. Yes, sir.

Q. And ask for Chiles?

A. Yes, sir.

Q. What did the man tell you?

A. He did not tell me nothing; he said he would sign for it.

Q. You delivered it to him?

A. Yes, sir.

Q. Did he sign for it?

A. Yes, sir.

Q. Look at this sheet and see if that is the signature that the man signed to the message? (Handing witness paper.)

A. I don't know whether it is his signature; he signed the sheet. That is Sam Chiles. I don't know whether the same sheet or not.

The above mentioned sheet is in the words and figures following, to-wit:

L. H. CHERRY

Form 87. The Western Union Telegraph Co.'s Messenger
9/1 (Incorporated) No. 2
1904. Delivery sheet.

No.	Time.	Charges.	Signature	Time Del'd.
69	2.15	ofc	H. C. Macklin	7:20
			Address,	
105	6.05	Paid	J. M. Barr	6.15
			Address,	
		Paid		
108	6.05	65c.	M. R. Coleman,	
26			Address,	
		(1)	Address Suffolk	
127	6.05	Paid	Address	
			Sam Chiles	9.20

Q. That is the message you delivered on board ship that night?

A. Yes, sir.

Cross-examination.

By Mr. STOAKLEY:

Q. You don't know whether this is the same sheet or not?

A. No, sir. I know it is signed Sam Chiles on it.

Q. You gave it to somebody and he signed Sam Chiles?

A. I gave it to a sailor on board the ship by the gang board.

Q. You did not give it to Mr. Chiles?

A. No, sir—I don't know. I know I gave it to the sailor and he signed it; I don't know who he was.

Q. Tell me about your quitting the telegraph company soon after this?

A. I had some trouble with the operator and he discharged me.

Q. Now, you say you did not deliver this to Mr. Chiles?

A. I don't know who it was; I don't know whether it was him or not.

Q. Can you write?

A. Yes, sir.

Q. Let me see you write?

A. How do you spell "Chiles"?

Q. C-h-i-l-e-s.

A. (Witness writes the name "Samuel Chiles" on paper handed him.)

By Mr. STOAKLEY to the jury: I want to show you the similarity between the writing on the sheet and this boy's writing. The word

"Samuel" and the word "Chiles." (Both papers handed to jury for inspection.)

Q. Will you tell me, did you try to find Mr. Chiles?

A. No, sir, every time I carried a message on board a ship somebody at the gang plank would sign for it.

Q. You did not try to find Mr. Chiles?

A. They wont let you try.

Q. You were notified before you came here this morning, and were expected to be here?

A. I was notified by Mr. Burgess; I didn't know just what 27 day.

Q. You promised to be here?

A. Yes, sir.

Q. And yet we had to send out to hunt you up?

A. I didn't know what day to be here.

Q. Didn't you know what day?

A. He told me last Monday. I don't know what day he told me to be here.

Q. You promised to be here and didn't come?

A. I didn't know what day it was.

Redirect examination.

By Mr. LITTLE:

Q. Who signed that name "Sam Chiles" to the sheet? Did you?

A. No, sir, I did not.

Q. You are quite sure you took this message on board the ship?

A. Yes, sir.

Q. And inquired for Samuel Chiles?

A. Yes, sir.

Q. And the man at the gang board signed for it?

A. Yes, sir, he signed a sheet.

Q. That is not your writing on that sheet?

A. No, sir.

Q. You are certain of that?

A. Yes, sir.

Q. You say it was at night?

A. Yes, sir.

Q. Have you delivered messages to ships in the navy yard before?

A. Yes, sir.

Q. Do they allow you to go on board the ship and run around hunting for people?

A. No, sir.

Q. What do they require you to do?

A. The officer of the deck always takes them, but there was no officer aboard the Abarenda.

Recross-examination.

By Mr. STOAKLEY:

Q. You say there was no officer of the deck aboard the Abarenda?

A. I didn't see any; there was a man there.

By Mr. LITTLE:

Q. Do you know whether this was one of the colliers?
A. I don't know what it is.

28 W. H. STEWART being duly sworn, testified as follows:

Examined by Mr. LITTLE:

Q. Colonel, you have been a resident of Portsmouth a good many years, have you not?
A. Yes, sir, I have been a resident since 1870.
Q. Are you familiar with the City of Portsmouth and its surroundings?
A. Yes, sir.
Q. Can you say whether the present navy yard of the government is located at a place called Gosport, or formerly called Gosport?
A. Yes, it is located there, and has been ever since I can recollect the navy yard was where it is now.
Q. How far back could you recollect, do you suppose?
A. I was born in 1838, and I suppose since I was ten years old I remember the navy yard.
Q. And it has always been in the same place?
A. Yes, sir; part of it is now in the City of Portsmouth and part of it in Norfolk County.
Q. Can you say whether or not it was formerly known as the Gosport Navy Yard?
A. Yes, sir.
Q. Is it the same place which is now known as the Norfolk Navy Yard?

Cross-examination.

By Mr. STOAKLEY:

Q. You say it is now known as the Norfolk Navy Yard?
A. That is the official name I understand, sir.

By Mr. LITTLE: I want to offer in evidence now an Act of the General Assembly of Virginia, passed on January 25, 1800, entitled an act authorizing the Governor of this Commonwealth to convey to the United States upon certain conditions the property of this Commonwealth called Gosport. Acts of 1801-02, page 248. I also offer in evidence the Acts of the General Assembly of Virginia of February 27, 1833, entitled An Act ceding to the United States the jurisdiction over certain lands purchased by them in the County of Norfolk. I call the court's attention in that connection to section 15 of the Code.

29 By Mr. STOAKLEY: If it please, you- honor, the offering of these acts, or anything which pertains to the law of this question appears to me to be a question for the court exclusively, so far as the law is concerned I have no objection to that, but I believe the Court of Appeals has repeatedly said you cannot read law books to the jury. A question of law is what the judge is here to provide

for, and any question which pertains to law in this case is exclusively for the court to pass upon and not the jury. I don't say this, trying to take from the jury anything that is properly in their province because I am the last one to take anything from the jury that is within their province, but that the jury pass upon the facts and the court upon the law is a question which is too long settled to cause me to debate it. I hold that this is a question of law. He has proven by his own witness that they are in the habit of delivering telegrams in the Navy Yard consequently, holding that to be so, what is the use, and how can he come here and say that which the company has made their rule and their habit and which is a regulation of the company—how can he come here now and say such and such is the law. Under the declaration it makes no difference what the law is, if it is a regulation of the company he is compelled to deliver it.

By the COURT: If they be acts, as I understand, which are necessary to put in evidence you have to introduce them in evidence; that does not exclude the court from construing the law to the jury, but if the acts are necessary to be put in evidence—I don't say that these are—why, you have to do it in a formal manner. I see no objection to these. The court will be ready to construe the acts as far as he may be called upon in this case.

By Mr. LITTLE: I have no desire to take up the time of the jury. I offer them in evidence, and will ask an instruction upon them, and the question will come up upon that instruction.

By Mr. LITTLE: I want to introduce a copy of the message.

Same is introduced and is in the words and figures following, to-wit:

19 N Ca N 7 Paid 127
847 P
Di Richmond, Va. Sept. 4,

30 Gunner Sam L. Chiles, U. S. S. Aberenda, Nevy Yard Ports., Va.:

Left for home to-night. Saw your orders.

W. F. HAMBURGER.

E. E. BURGESS, recalled, testified as follows:

Examined by Mr. LITTLE:

Q. Will you state whether or not this copy of the message I now show you is the impression copy of the message received at the Portsmouth office?

A. Yes, sir.

Q. It was received and is the one sent to this man?

A. Yes, sir.

Q. And is the one referred to by Cherry?

A. Yes, sir.

The foregoing evidence is all the evidence adduced on the said trial. J. F. CROCKER.

STATE OF VIRGINIA, *City of Portsmouth, to-wit:*

I, C. T. Phillips, clerk of the Court of Hustings for the City of Portsmouth, in the State of Virginia, do hereby certify that the foregoing is a true transcript of the record in the foregoing cause; and I further certify that notice required by section 3457, Code of 1904, was duly given in accordance with said section.

Given under my hand this 4th day of August, in the year nineteen hundred and six.

C. T. PHILLIPS, *Clerk,*
By E. THOMPSON, *D. C.*

Costs of record, $10.50.

A copy—Teste:
H. STEWART JONES, *C. C.*

31 *Opinion by Judge John A. Buchanan, Wytheville, Va., June 13th,* 1907.

WESTERN UNION TELEGRAPH COMPANY
v.
SAMUEL CHILES.

Court of Hustings of City of Portsmouth.

This proceeding was instituted by Samuel Chiles against the Western Union Telegraph Company to recover the penalty of one hundred dollars imposed by clause 6, section 1294-*h*, of the Code of 1904, for failure to deliver a telegraphic message sent by W. F. Hamburger from the city of Richmond, addressed to "Gunner Samuel Chiles, U. S. S. Albarenda, Navy Yard, Norfolk, Va." There was a verdict and judgment in favor of the plaintiff, and to that judgment this writ of error was awarded.

As the jurisdiction of this court to review the judgment complained of depends solely upon the unconstitutionality of the clause of the section under which the penalty was imposed, the first question to be considered is whether or not that clause is constitutional, and if it be found to be constitutional it is the only question that we can consider. Const. sec. 88; Postal Tel. Co. *v.* Umstadter, 103 Va. 742, 748-9.

32 The ground upon which it is claimed that the Act is unconstitutional is that the United States has exclusive legislative jurisdiction over the territory embraced within the limits of the Norfolk Navy Yard, formerly the Gosport Navy Yard, acquired by purchase under the provisions of Acts of Assembly passed January 25th, 1800 and February 27th, 1833. (Acts 1800, p. 246, and Acts 1832-3, p. 25.)

If it be conceded that the United States has this exclusive legislative jurisdiction over the Norfolk Navy Yard, as claimed by the counsel of the Telegraph Company, what provision in either the Federal or State Constitution expressly or impliedly inhibits the General Assembly from imposing the penalty in question?

It was conceded in oral argument (and if it had not been we think it is clear) that the statute is not in conflict with the commerce clause of the Federal Constitution, Art. 1, sec. 8, cl. 3. The statute, as applied to the facts of this case, does not in any way attempt to regulate commerce with a foreign nation, among the states, nor among the Indian tribes.

We have been cited to no provision in either Federal or
33 State Constitutions, nor have we found any, which prohibits the legislation in question. The Telegraph Company was doing business in the State. The contract to deliver was made in the State. The fact that the message was to be delivered at a point over which the State had no legislative jurisdiction would not render the Act unconstitutional unless forbidden (which, as we have seen, it was not) by the Federal or State Constitution, for it is well settled that all subjects of legislation not prohibited by the Federal or State Constitutions are within the discretion of the General Assembly. Com'th *v.* Drewry, 15 Gratt. 1, 5; 8 Cyc. 774-5.

The imposition of a penalty upon a telegraph company for failure to deliver a message at any point within the territorial limits of the State does not seem to us to be unjust or unwise legislation, but if it were the remedy is with the General Assembly and not with the courts.

The judgment complained of must be affirmed.

A Copy.

Teste:

J. M. KELLY, *C. C.*

34 VIRGINIA:

In the Clerk's Office of the Supreme Court of Appeals, in the Library Building, in the City of Richmond, on Monday, the 24th Day of June, 1907.

The following copy of an order of this Court entered at its place of session at Wytheville, was this day received by the Clerk here, and is as follows:

"VIRGINIA:

In the Supreme Court of Appeals, Held at the Courthouse of Wythe County, in the Town of Wytheville, on Thursday, the 13th Day of June, 1907.

WESTERN UNION TELEGRAPH COMPANY, Plaintiff in Error,
against
SAMUEL CHILES, Defendant in Error.

Upon a writ of error and supersedeas to a judgment rendered by the Court of Hustings of the City of Portsmouth on the 25th day of July, 1906.

This cause, which is pending in this court at its place of session at Richmond, having been fully heard but not determined at said place

of session, this day came here the parties, by counsel, and the Court having maturely considered the transcript of the record of the judgment aforesaid and arguments of counsel, is of opinion, for reasons stated in writing and filed with the record, that there is no error in the judgment complained of. It is therefore considered that the same be affirmed and that the Defendant in Error recover of the Plaintiff in Error damages according to law and his costs by him in this behalf herein expended.

Which is ordered to be entered in the order book here and forthwith certified, together with a certified copy of the opinion in this case, to the Clerk of this Court at Richmond, who will enter this order in the order book there and certify it to the said Court of Hustings of the City of Portsmouth.

Defendant in Error's costs at Wytheville $1.77.

A Copy,

Teste: J. M. KELLY, *C. C.*"

Tsete: H. STEWART JONES, *C. C.*

Defendant in Error's costs at Richmond:

Attorney's fee	$20.00
Clerk's fee	2.23
	$22.23

35 *Authentication of Record.*

STATE OF VIRGINIA, *City of Richmond, To-wit:*

I, H. Stewart Jones, Clerk of the Supreme Court of Appeals of the State of Virginia, do hereby certify that the writings annexed to this certificate are true copies of the originals of the record in the case of Western Union Telegraph Company against Samuel Chiles on file and of record in my said office, and that said originals, together constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court, this the 26th day of July, 1907.

[Seal Supreme Court of Appeals of Virginia, Richmond.]

H. STEWART JONES, *Clerk.*

I, James Keith, President and one of the Judges of the Supreme Court of Appeals of the State of Virginia, do hereby certify that the foregoing is the true and genuine signature of H. Stewart Jones, Clerk of the said court, and that the foregoing attestation made by him is in due form.

Witness my hand and seal this the 26th day of April, 1907.

JAMES KEITH, [SEAL.]
President.

I, H. Stewart Jones, Clerk of said Court, do hereby certify that the Honorable James Keith, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the

same, President of the Supreme Court of Appeals of the State of Virginia, duly commissioned and qualified.

Witness my hand and the seal of said court, this the 26th day of July, 1907.

[Seal Supreme Court of Appeals of Virginia, Richmond.]

H. STEWART JONES, *Clerk.*

36 In the Supreme Court of Appeals of Virginia.

WESTERN UNION TELEGRAPH COMPANY, Plaintiff in Error,
v.
SAMUEL CHILES, Defendant in Error.

Assignment of Errors.

The Western Union Telegraph Company, plaintiff in error, comes and files its petition for a writ of error, and says that there are errors in the record and proceedings in this cause, and assigns the following:

1. The Supreme Court of Appeals of Virginia erred in holding that the Virginia statute imposing penalties upon telegraph companies for failure to deliver messages was valid in so far as it was construed to apply to the United States Navy Yard in the vicinity of Portsmouth, Virginia, which was ceded by the State of Virginia to, and purchased by the United States, under the terms of an Act of the General Assembly of Virginia passed on the 25th day of January, 1800, and an Act of the General Assembly of Virginia passed on the 27th day of February, 1823, by which acts of cession the Commonwealth of Virginia transferred to the United States all of its jurisdiction over said territory.

37 *2.* That the Supreme Court of Appeals of Virginia erred in holding that said Act of Virginia, as so construed by it, was valid and not in conflict with Article I, Section 8, Clause 17, of the Constitution of the United States giving exclusive jurisdiction to the United States over all places purchased by the consent of the legislature of the state in which the same should be for the erection of forts, magazines, *arsons*, dock yards, and all other needful buildings.

3. That the Supreme Court of Appeals of Virginia erred in not reversing the decision of the Hustings Court of the City of Portsmouth overruling the demurrer of the defendant raising the above constitutional question, and the motion of the defendant in arrest of judgment, on the same grounds.

For which errors the plaintiff in error, the Western Union Telegraph Company, prays that judgment of the Supreme Court of Appeals of Virginia, dated June 13, 1907, may be reviewed, reversed and annulled, and that the judgment may be rendered in favor of the said plaintiff in error and for costs.

WESTERN UNION TELEGRAPH COMPANY,
By ROBT. M. HUGHES, *Its Counsel.*

38 In the Supreme Court of Appeals of Virginia.

WESTERN UNION TELEGRAPH COMPANY, Plaintiff in Error,
v.
SAMUEL CHILES, Defendant in Error.

Petition for Writ of Error.

Considering itself aggrieved by the final decision of the Supreme Court of Appeals of Virginia rendering judgment against it in the above entitled cause on June 13, 1907, the Western Union Telegraph Company, the plaintiff in error, hereby prays a writ of error and supersedeas from the said decision and judgment to the Supreme Court of the United States. Assignment of errors is hereto attached.

WESTERN UNION TELEGRAPH COMPANY,
By ROBT. M. HUGHES, *Its Counsel.*

39 Supreme Court of Appeals of Virginia.

Let the writ of error issue upon the execution of a bond by the plaintiff, Western Union Telegraph Company, or some one for it, to the defendant, Samuel Chiles, in the sum of Five Hundred Dollars, said bond, when approved, to act as a supersedeas.

JAMES KEITH,
President of the Supreme Court of Appeals of Virginia.

Dated July 26, 1907.

40 In the Supreme Court of Appeals of Virginia.

WESTERN UNION TELEGRAPH COMPANY, Plaintiff in Error,
v.
SAMUEL CHILES, Defendant in Error.

Bond.

Know all men by these presents, that we —— —— as principal, and the Atlantic Trust and Deposit Company, a corporation chartered and existing under the laws of the State of Virginia, as surety, are held and firmly bound unto Samuel Chiles in the sum of Five Hundred Dollars to be paid to said Samuel Chiles, to which payment, well and *firmly* to be made, we bind ourselves jointly and severally, firmly by these presents.

Sealed with our seals and dated this 26th day of July, A. D. 1907.

Whereas, The Western Union Telegraph Company, plaintiff in Error in the above entitled cause, seeks to prosecute its writ of error

to the Supreme Court of the United States to reverse the judgment rendered in the above entitled case by the Supreme Court of Appeals of Virginia;

Now, therefore, the condition of this obligation is such, that if the above named plaintiff in error shall prosecute its said writ of error to effect, and answer all costs and damages that may be adjudged if it shall fail to make good its plea, then this obligation to be void, otherwise to remain in full force and effect.

[Seal Atlantic Trust & Deposit Co., Incorporated 1902, Norfolk, Va.]

H. H. LITTLE. [SEAL.]
ATLANTIC TRUST & DEPOSIT CO.,
By A. E. KRISE.

Attest:
R. A. DODSON, *Sec'y.*

41 The foregoing bond is approved.

JAMES KEITH,
President of the Supreme Court of Appeals of Virginia.

The original of the foregoing supersedeas bond was lodged with the clerk of the Supreme Court of Appeals of Virginia on July 26", 1907, and the following endorsement made thereon: "Bond filed July 26", 1907."

H. STEWART JONES,
Clerk Supreme Court of Appeals of Virginia.

42 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Supreme Court of Appeals of Virginia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of Appeals of Virginia before you, at Richmond, at the June Term 1907 thereof, between Western Union Telegraph Company, plaintiff and Samuel Chiles, defendant, a manifest error hath happened, to the great damage of the said plaintiff Western Union Telegraph Company as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the party aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty (30) days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the

United States, this 26th day of July, in the year of our Lord one thousand nine hundred and seven.

[Seal United States Circuit Court, Eastern Dist. of Virginia, Fourth Circuit.]

JOSEPH P. BRADY,
Clerk of the Circuit Court of the United States for the Eastern District of Virginia.

Allowed:
JAMES KEITH,
President Sup. Court of Appeals of Virginia.

43 [Endorsed:] Western Union Tel. Co. *v.* Samuel Chiles. Writ of error. Filed July 26/07.

44 (Here follows writ of error.)

Endorsed on writ of error:—

The original of the foregoing writ of error was lodged with the Clerk of the Supreme Court of Appeals of Virginia on July 26, 1907, and at the same time and place a copy thereof for the plaintiff, Samuel Chiles.

The following endorsement was made upon the said original writ and upon the copy: "Writ of Error. Filed *July* July 26, 1907."

H. STEWART JONES,
Clerk Supreme Court of Appeals of Virginia.

45 *Citation.*

THE UNITED STATES OF AMERICA:

The President of the United States to Samuel Chiles, Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to a writ of error filed in the office of the Clerk of the Supreme Court of Appeals of Virginia, at Richmond, wherein you are defendant in error and the Western Union Telegraph Company is plaintiff in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the president of the supreme Court of Appeals of Virginia, this 26" day of July, A. D. 1907.

JAMES KEITH,
President of the Supreme Court of Appeals of Virginia.

Attest:—
H. STEWART JONES,
Clerk Supreme Court of Appeals of Virginia.

Service accepted
SAMUEL CHILES,
By W. D. STOAKLEY, *His Att'y.*

July 31, 1907.

46 *Return to Writ.*

UNITED STATES OF AMERICA,
Supreme Court of Appeals of Virginia, To-wit:

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within entitled case, with all things concerning the same.

In Witness whereof, I hereunto subscribe my name and affix the seal of said Supreme Court of Appeals, in the City of Richmond, this 31st day of July, A. D. 1907.

[Seal Supreme Court of Appeals of Virginia, Richmond.]

H. STEWART JONES,
Clerk Supreme Court of Appeals of Virginia, at Richmond.

Costs of Western Union Telegraph Company $18.66.

Endorsed on cover: File No. 20,835. Virginia supreme court of appeals. Term No. 432. Western Union Telegraph Company, plaintiff in error, *vs.* Samuel Chiles. Filed August 22d, 1907. File No. 20,835.

Supreme Court of the United States.

OCTOBER TERM, 1907.

No. 432.

WESTERN UNION TELEGRAPH COMPANY,
PLAINTIFF IN ERROR,

vs.

SAMUEL CHILES.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT.

This is a writ of error to the Supreme Court of Appeals of Virginia affirming the Court of Hustings of the City of Portsmouth, Virginia, in a suit brought by Samuel Chiles against the Western Union Telegraph Company to recover the statutory penalty provided by clause 6 of Section 1294-h of the Code of Virginia of 1904 for the alleged failure to deliver a telegram sent from Richmond, Virginia, on September 1st, 1904, and addressed to Gunner Samuel Chiles, U. S. S. Abarenda, United States Navy Yard, Norfolk, Virginia, which message was never received by him.

The Norfolk Navy Yard is located on the opposite side of the Elizabeth River from the City of Norfolk, adjoining the City of Portsmouth, and the message having been sent from Richmond to Norfolk, was forwarded by the company to its office in Portsmouth, from which place it was sent out by a messenger to be delivered on board the Steamship Abarenda at the Navy Yard. The plaintiff testified that he had never

received it, but the evidence of the defendant company was that the messenger boy took the message to the steamship and delivered it to some person on board (R. 20).

The statute under which the suit was brought is as follows:

"It shall be the duty of every telegraph company, upon the arrival of a dispatch or message at the point to which it is to be transmitted, to cause the same to be forwarded by a messenger to the person to whom the same is addressed or his agent, and upon the payment of any charges due on this dispatch or message to deliver it; provided, such person or agent reside within the city or incorporated town in which such station is, or that at such point the regulations of the company require such delivery.

It shall also be the duty of such company to forward a dispatch or message promptly, as directed, where the same is to be forwarded. For every failure to deliver or forward a dispatch or message as promptly as practicable the company shall forfeit one hundred dollars to the person sending the dispatch or message or the person to whom it was addressed." Sec. 1294-h, clause 6, Code of 1904.

The second amended declaration (R. 10-11) set out that the message was received at the office of the defendant company in Portsmouth for delivery, and that it became the duty of the Company to deliver it to the plaintiff on the Steamship Abarenda in the Navy Yard as promptly as practicable, but that it had wholly failed to discharge its duty and had not delivered it, wherefore the plaintiff was entitled to recover the penalty provided by the statute. To this declaration and to the original and amended declarations the defendant demurred and assigned its grounds of demurrer (R. 12), the principal ground relied upon being the fourth, that "the declaration showed that the place at which the message was to be delivered was on board a government vessel at the Navy Yard, which was under the jurisdiction and control of the United

States, and that the State was without jurisdiction to impose a penalty for failure to deliver a message at that point." The court overruled the demurrer, and the case was submitted to a jury, which found for the plaintiff, the court refusing the instruction asked for by defendant raising the same question, and refusing to set aside the judgment. A writ of error was sued out of the Supreme Court of Appeals of Virginia, which affirmed this judgment (R. 25), whereupon this writ of error was sued out.

The specifications of error relied upon are as follows:

"No. 1. The Supreme Court of Appeals of Virginia erred in holding that the Virginia statute imposing penalties upon telegraph companies for failure to deliver messages was valid in so far as it was construed to apply to the United States Navy Yard in the vicinity of Portsmouth, Virginia, which was ceded by the State of Virginia to, and purchased by the United States, under the terms of an Act of the General Assembly of Virginia passed on the 25th day of January, 1800, and an Act of the General Assembly of Virginia passed on the 27th day of February, 1823, by which acts of cession the Commonwealth of Virginia transferred to the United States all of its jurisdiction over said territory.

"No. 2. That the Supreme Court of Appeals of Virginia erred in holding that said Act of Virginia, as so construed by it, was valid and not in conflict with Article I, Section 8, Clause 17, of the Constitution of the United States giving exclusive jurisdiction to the United States over all places purchased by the consent of the legislature of the State in which the same should be for the erection of forts, magazines, arsenals, dock yards, and all other needful buildings.

"No. 3. That the Supreme Court of Appeals of Virginia erred in not reversing the decision of the Hustings Court of the City of Portsmouth overruling the demurrer of the defendant raising the above constitutional question, and the motion of the defendant in arrest of judgment, on the same grounds."

THE POINT IN THE CASE.

The question involved in this writ of error is the right of the State to impose the penalties prescribed by one of its statutes for a default occurring within the limits of a government reservation, which has been acquired and is under the exclusive legislative jurisdiction of the United States.

ARGUMENT.

The Supreme Court of Appeals in affirming the judgment held that the act was itself constitutional; that the fact that the message was to be delivered at a point over which the State had no jurisdiction would not render it unconstitutional unless forbidden by the Federal or State constitutions, and that there was nothing in either of these constitutions prohibiting the enactment of such legislation. (R. 25).

As to the constitutionality of the act, the court had on two or three previous occasions held that the statute imposing the penalty was constitutional and could be enforced for any default on the part of the company occurring within the limits of its jurisdiction, and it is not intended to controvert that proposition here. This right, however, to enact and impose these penalty statutes is upheld on the ground that it is one of those matters included within the police power of the State. It can hardly be successfully contended that the police power of a State can be invoked within the limits of territory not only beyond its jurisdiction, but actually within the jurisdiction and subject to the police power of another government, whether the Federal government or that of another State or Country; and, if it cannot, then any default on the part of the plaintiff in error occurring within such territory was an extra-territorial default, and one to which the statute could not be held to apply.

Western Union Telegraph Co. v. Pendleton, 122 U. S., 347.

We submit that the court erred in holding that there was nothing in the Federal or State constitutions which prohibited the legislation, in so far as it applies to any act or omission on the part of the plaintiff in error occurring within the limits of the government reservation.

Paragraph 17 of Section 8 of Article 1 of the constitution of the United States gives to Congress the power to exercise exclusive legislation over such district (not exceeding ten miles square) as may by cession of particular States and the acceptance of Congress become the seat of government of the United States, and "to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be for the erection of forts, magazines, arsenals, dock yards and other needful buildings."

The Norfolk Navy Yard, formerly known as the Gosport Navy Yard, was purchased by the United States under the provisions of an Act of Assembly passed January 25, 1800, and an Act of Assembly passed February 27, 1833, which are as follows:

"Whereas it has been represented to the present general assembly, that the government of the United States are desirous that certain lands, the property of this commonwealth, commonly called and known by the name of Gosport, should be vested in the United States, for the purpose of establishing a navy yard on the same:

"1. Be it enacted by the general assembly, that it shall and may be lawful for the governor of this commonwealth, and he is authorized to appoint some fit and proper person to meet such person as shall be appointed on the part of the United States, to ascertain and fix the value of the property belonging to this commonwealth, situate near the town of Portsmouth, in the vicinity of Norfolk, commonly called and known by the name of Gosport. So soon as the value of the property shall be ascertained and the governor shall be satisfied that the government of the United States are willing to pay the amount thereof to this commonwealth, then, and in

that case, it shall be lawful for the governor of this commonwealth, and he is hereby authorized for, and in behalf of this commonwealth, by proper deeds in writing, under his hand and the seal of the commonwealth, to convey, transfer, assign and make over unto the United States, all interest in and title to, as well as all the jurisdiction which this commonwealth possesses over the public lands commonly called and known by the name of Gosport before mentioned, for the purpose of establishing a navy yard; Provided, That nothing herein contained shall be so construed as to prevent the officers of this State from executing any process whatever within the jurisdiction hereby directed to be ceded.

"2. And be it further enacted, That in case the government of the United States shall at any time hereafter abandon the design of establishing a navy yard at the place hereby ceded to the United States, or after the establishment thereof shall discontinue the same, then, and in that case, the property in the soil, and the jurisdiction over the territory hereby directed to be vested in the United States, shall revert to this commonwealth, and shall be considered as the property and subject to the jurisdiction of the same, in like manner as if this act had never been made; Provided, That in such case this commonwealth will repay to the government of the United States, the sum or sums paid by the United States in consideration of the cession hereby directed to be made.

"3. This act shall commence and be in force from and after the passing thereof."

Acts 1800, p. 246.

"1. Be it enacted by the general assembly of the commonwealth of Virginia, That it shall and may be lawful for the governor of this commonwealth, and he is hereby fully authorized for and in behalf of the commonwealth, by proper deeds and instruments in writing, under his hand and the seal of the commonwealth, to convey, transfer, assign and make over to the United States, all the jurisdiction which this commonwealth possesses over the lots in that part of the town of Portsmouth, in Norfolk county, called Gosport, numbered in the plan of the said town, from one hundred and twenty to

one hundred and fifty-one inclusive, and all the other lands adjoining to the southern part of Gosport, lately purchased by the United States for the purposes of a navy yard and dry dock; and also over the lands adjoining Fort Nelson, in the said county of Norfolk, lately purchased by the United States for the purpose of a naval hospital.

"2. Be it further enacted, That the trustees of the said town of Portsmouth shall be, and they are hereby authorized and empowered, to sell and convey to the United States, all the right, title and interest belonging to the commonwealth, or to the said town of Portsmouth, in and to the streets in that part of the said town called Gosport, which bind on the lots lately purchased by the United States, for an extension of the navy yard at that place, and which are comprehended within the following bounds, to-wit: all that part of Second street lying to the south of Lincoln street, and all those parts of Nelson, Fayette and Jefferson streets, lying to the east of Third street; and whensoever the trustees of the said town shall have sold, and by proper deed conveyed to the United States, the before-mentioned parts of the streets aforesaid, it shall be lawful for the governor of this commonwealth to transfer to the United States in manner aforesaid, all the jurisdiction which this commonwealth possesses over the same; Provided, That nothing herein contained shall be so construed as to prevent the officers of this State from executing any process whatever within the jurisdiction hereby directed to be ceded to the United States.

"3. And be it further enacted, That if at any time hereafter the United States, or the government thereof, shall fail for the space of five years to use the lands aforesaid, or any part thereof, for the purposes herein before mentioned, then, and in that case, the jurisdiction over such land hereby directed to be vested in the United States, shall revert to this commonwealth, and be subject to the jurisdiction of the same, in like manner as if this act had never been made.

"4. This act shall be in force from the passing thereof."

Acts 1832-3, p. 25.

and the Federal Government has been in possession and use of the property ever since.

"When the title is thus acquired by purchase by consent of the State, the Federal jurisdiction is exclusive of all State authority. This follows from the declaration of the constitution that Congress shall have like authority over such places as it has over the District which is the seat of government; that is, the power of exclusive legislation in all cases whatsoever. Broader or clearer language could not be used to exclude all other authority than that of Congress, and that no other authority can be exercised over them has been the uniform opinion of Federal and State tribunals.

Fort Leavenworth R. R. Co. v. Lowe, 114 U. S., 525, 532.

If the United States has the right of exclusive legislation over the ceded lands, they also have the exclusive jurisdiction, and having exclusive jurisdiction, the State of Virginia has no authority to enforce its laws for any default occurring within that territory; and to that extent the statute in question, as construed and applied by the Supreme Court of Appeals of Virginia, is invalid and unconstitutional.

"The State jurisdiction," says Mr. Justice Story in *U. S. v. Cornell,* 2 Mason, 60, 63, "is completely ousted. This is the necessary result, for exclusive jurisdiction is the attendant upon exclusive legislation; and the consent of the State legislature is, by the very terms of the Constitution, by which all the States are bound, and to which all are parties, a virtual surrender and cession of its sovereignty over the place. Nor is there anything novel in this construction. It is under the like terms in the same clause of the Constitution that exclusive jurisdiction is now exercised by Congress in the District of Columbia; * * * ."

In the case of *Commonwealth v. Clary,* 8 Mass., 72, the Supreme Court of Massachusetts held that the courts of the commonwealth could not take cognizance of offenses upon lands in the town of Springfield purchased with the consent of

the commonwealth by the United States for the purpose of erecting arsenals upon them. That was the case of a prosecution of the defendant for selling spirituous liquors on the land without a license, contrary to the statutes of the State, and the court held that the law had no operation within the lands mentioned, saying:

"The territory in which the offense charged is agreed to have been committed is the territory of the United States over which Congress has exclusive power of legislation. * * * No offense committed within that territory was committed against the laws of this commonwealth, nor can such offense be punishable by the courts of the commonwealth unless the Congress of the United States should give to the courts jurisdiction thereof."

See also *In re Ladd*, 74 F. R., 31, 41, where an officer was indicted for selling liquor on a government reservation without taking out a State license, and in which the court says:

"To briefly recapitulate the conclusions reached, I hold that by the act of the State legislature approved March 29, 1887, the State of Nebraska ceded to the United States its entire political jurisdiction, which includes judicial and legislative jurisdiction, save in the matter of executing process and opening and repairing roads and highways, over the Ft. Robinson military reservation; that this jurisdiction thus ceded to and accepted by the United States could not be recaptured by the action of the State alone, and therefore the jurisdiction ceded by the act of 1887 was not affected by the action of the State legislature in passing the so-called amendatory act of March 29, 1889; that after the cession of jurisdiction on the part of the State, in 1887, justices of the peace acting under the authority of the State of Nebraska ceased to have jurisdiction over the ceded territory in matters of alleged criminal violation of he laws of the State committed on the reservation; that after the cession by the State, and acceptance by the United States, of jurisdiction over the reservation, the statutes

of the State regulating the sale of liquors ceased to be in force within the territory ceded to the United States. From these conclusions it, of necessity, follows that the warrants issued by the justice of the peace of Dawes County, upon which the petitioner was arrested by the sheriff, were so issued without due warrant of law; the informations filed with the justice showing upon their face that the acts complained of had not been done within the jurisdiction of the State, and that they could not be held to be in violation of the statutes of the State. This being so, the petitioner is clearly deprived of his liberty without due warrant of law, and is therefore entitled to be discharged from arrest."

"These authorities are sufficient to support the proposition which follows naturally from the language of the constitution that no other legislative power than that of Congress can be exercised over lands within a State purchased by the United States with her consent for one of the purposes designated; and that such consent under the constitution operates to exclude all other legislation authority."

> *Fort Leavenworth R. Co. v. Lowe,* 114 U. S., p. 537.
> See also *Foley v. Shriver,* 81 Va., 508.
> *Mitchell v. Tibbetts,* 17 Pick., 298.

If the constitutional provision that Congress shall have power to exercise exclusive legislation over given territory has any meaning at all, it means, clearly, that with respect to such territory the State is forbidden to legislate.

The Supreme Court of Appeals was of opinion that because the contract was made, and the place of delivery was within the State of Virginia, the penalty statute could be enforced, but the difficulty is that although the contract was made within the State, the violation of the statute—the breach of duty which the State has assumed to punish—occurred beyond its jurisdiction. It might with equal force be held that the penalty could be enforced in the case of a telegram sent from Virginia to a point in Maryland or to the District of Co-

lumbia although this would be directly in conflict with the rule laid down by this court in Western Union Telegraph Co. v. Pendleton, *supra*.

The power of Congress to exercise exclusive legislation over the District of Columbia is granted in the same article, section and subdivision of the United States Constitution as the power to exercise similarly exclusive legislation over dock yards, etc.; and if this judgment of the Supreme Court of Appeals of Virginia is upheld, it can be only on a principle which would equally permit the State of Maryland to prescribe the order for the transmission and delivery of messages in the national capital and to impose a penalty for violations committed there of the duties so imposed.

In W. U. Tel. Co. v. Pendleton, 122 U. S., 347, this court held that a statute of Indiana which, as construed by the highest court of that State, was held to impose a penalty on the plaintiff in error for failure to deliver a message in Iowa, was, as to such a message, invalid because in conflict with that provision of the United States Constitution conferring on Congress the power "to regulate commerce * * * among the several States * * * ." The object of vesting the power to regulate commerce in Congress, it was said in that case, was

"to secure with reference to its subjects uniform regulations where such uniformity was practicable against conflicting State legislation. Such conflicting legislation would inevitably follow with reference to telegraphic communications between citizens of different States if each State was vested with power to control them beyond its own limits. The manner and order of the delivery of telegrams, as well as their transmission, would vary according to the judgment of each State."

If this principle, recognized in W. U. Tel. Co. v. Pendleton (*supra*) and again in W. U. Tel. Co. v. James, 162 U. S., 650,

659, prohibits the imposition of a penalty, by one State for a default committed in another, because of the general language of the commerce clause of the Constitution, is it not much more clear that a State is prohibited from penalizing a telegraph company for a breach of duty occurring, not in another State, but in one of those places where Congress, under the Constitution, has power not merely to regulate commerce but to "exercise exclusive legislation in all cases whatsoever?"

Suppose Congress chose to enact that, in the Norfolk Navy Yard, the penalty for failure to deliver messages as promptly as practicable should be fifty dollars instead of one hundred dollars? Suppose Congress chose to enact that, in the Norfolk Navy Yard, messages should be delivered, not in the order of their priority, but in the order of their importance, a preference being accorded for example, to messages relating to sickness and death? Or suppose the commandant of the Yard should under the Navy regulations prohibit persons entering the Yard, or that the commander of the Abarenda under the regulations should have prohibited persons coming on board? If the framers of the Constitution, in vesting in Congress the power to regulate commerce among the States, sought to secure uniform regulations against conflicting legislation, surely they did not intend that there should be conflicting legislation, or the possibility of it, in the places where Congress was given the power to "exercise exclusive legislation in all cases whatsoever."

It is true that Congress has not acted with respect to the question of delivering messages in the Norfolk Navy Yard; but neither, in the Pendleton case, had the State of Iowa acted with respect to the delivery of telegrams within her limits. It is not the *existence* of a conflict, but the *possibility* of one, which is the test of the constitutional power of the State.

Within the Norfolk Navy Yard the State of Virginia could

not levy or collect a tax (Fort Leavenworth R. R. v. Lowe *supra*; 5 Op. Atty. Gen., 316; Bannon v. Burns, 39 F., 892). She could not prescribe or enforce the punishment for a crime committed therein (U. S. v. Cornell *supra*, 2 Mason, 60, 63; 8 Op's Atty. Gen., 418; Com. v. Clary *supra*; In re Ladd, *supra*). She could not, except for the express reservation of the right so to do, serve civil process there (14 Op. Atty. Gen. 426; Martin v. House, 39 F., 694). A person residing there is not a "resident" of the State, and under a provision of the State Constitution requiring that electors shall be residents of the State would not be entitled to vote (Sinks v. Reese, 19 Ohio St., 306, 316). "National and municipal powers of government of every description," with respect to this territory, were cut off from the State of Virginia and "united in the government of the Union" (Pollard's Lessee v. Hagan, 3 How., p. 223). As in the case of the District of Columbia, the only government in the Navy Yard is that of the United States and the only laws that are or can be of force there are the laws of the United States; "No portion of the State sovereignty or jurisdiction remained in or over the ceded district. The only sovereignty in the District is that of the United States." (U. S. v. Williams, 4 Cranch C. C., 372, 399).

We submit that, the default having occurred in territory of this character, the legal situation presented is the same as though the default had occurred in the District of Columbia or in a Territory of the United States, and that the penal statute of the State and the jurisdiction of its courts cannot be extended to cover it.

The judgment should be reversed.

Respectfully submitted,
GEORGE H. FEARONS,
ROBERT M. HUGHES,
RUSH TAGGART,
FRANCIS RAYMOND STARK,
For Plaintiff in Error.

Supreme Court of the United States.

OCTOBER TERM, 1907.

No. 432.

WESTERN UNION TELEGRAPH COMPANY,
PLAINTIFF IN ERROR,

vs.

SAMUEL CHILES.

BRIEF FOR DEFENDANT IN ERROR.

STATEMENT

W. F. Hamburger, on September 1st, 1904, in the City of Richmond, Va., delivered to the plaintiff in error a telegram for transmission and delivery, addressed to the defendant in error, care U. S. S. Abarenda, Navy Yard, Norfolk, Va., which telegram was never received by him. A judgment for the penalty of $100.00 for the failure to deliver the telegram in accordance with clause 6 of section 1294 h of the Code of Virginia was given the defendant in error in the Hustings Court for the City of Portsmouth, Va. The statute reads as follows: "It shall be the duty of every telegraph company, upon the arrival of a dispatch or a message at the point to which it is to be transmitted, to cause the same to be forwarded by a messenger to the person to whom the same is addressed or his agent, and, upon the payment of any charges due on this dispatch or message, to deliver it, provided such person or agent reside within the city or incorporated town in which such station is, or that at such point the regulations of the company require such delivery. It shall also be the duty of such company to forward a dispatch or message promptly, as directed, where the

same is to be forwarded. For every failure to deliver or forward a dispatch or message as promptly as practicable the company shall forfeit $100,00 to the person sending the dispatch or message, or the person to whom it was addressed."

The constitutionality of this statute, as being repugnant to the commerce clause of the Constitution of the United States, has been passed upon frequently and upheld in each case, 94 Va. 272, 90 Va. 297, 94 Va. 513, 90 Va. 297-300, 100 Va. 459-468, 103 Va. 742, and a similar statute in Western Union Telegraph Company v. Pendleton, 122 U. S., was declared constitutional.

The constitutionality of the statute, as being repugnant to the commerce clause of the Constitution of the United States being abandoned in oral argument, at least), it is now contended that the place where the telegram was to be delivered was without the State of Virginia, because it had been ceded to the United States for a Naval Reservation, and was beyond the jurisdiction of the State. By referring to section 15 of the Code of Virginia, setting out the different pieces or parcels of territory ceded, we find these words: "It is hereby declared that this State retains concurrent jurisdiction with the United States over the said places, so far as it lawfully can, consistent with the acts before mentioned; and its courts, magistrates and officers may take such cognizance, execute such process and discharge such other legal functions within the same as may not be incompatible with the true intent and meaning of the said acts."

The purpose for which the territory was ceded to the United States was for a Naval Reservation. Should they fail to use it for such purposes or abandon it the land reverts to the State of Virginia, because the territory is occupied by the Federal Government does not put it out of Virginia. The territory does not change. The (State Section 15 of the Code) recognized the purpose for which the land was to be used and provided for it in the following language: "It is hereby declared that this State retains concurrent jurisdiction with the United States over the said places, so far as it lawfully can, consistent with the acts before mentioned; and its courts, magistrates and officers may take such cognizance, execute such process and

discharge such other legal functions within the same as may not be incompatible with the true intent and meaning of the said acts." The general Government took only the rights in contemplation of its purposes and none other, C. R. I. & P. R. R. v. Wm. McGlinn 114 U. S. 270 L. Edition.

Article 11 of the Confederation reads, "Each State retains its sovereignty, freedom and independence, and every power, jurisdiction and right which is not by this Confederation expressly delegated to the United States, in Congress assembled."

Article X. of the Constitution says, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people."

In Lake Shore & Michigan Southern Railway Company v. Ohio 173 U. S. 707, (L. Edition) the court says, "In our opinion the power, whether called police, governmental or legislative, exists in each State, by appropriate enactment, not forbidden by its own Constitution or by the Constitution of the United States, to regulate the relative rights and duties of all persons and corporations within its jurisdiction, and, therefore, to provide for the public convenience and the public good. This power in the States is entirely distinct from any power granted to the general Government, although when exercised it may sometimes reach subjects over which National legislation can be constitutionally extended. It is respectfully contended that from the authority above quoted this power, jurisdiction or right was never granted to the general Government."

In the case of Lake Shore, etc., R. R. Co. v. State of Ohio, 173 U. S. 285, 19 sup. ct. 465, 43 L. Edition 702, Mr. Justice Harlan observes: That the decisions of that Court recognize "the fundamental principle that outside of the field directly occupied by the general Government, under the powers granted to it by the Constitution, all questions arising within a State that relate to its internal order, or that involve the public convenience, or the general good, are primarily for the determination of the State, and that its legislative enactments relating to these subjects, and which are not inconsistent with the State

Constitution, are to be respected and enforced by the Courts of the Union, if they do not, by their operation, directly intrench upon the authority of the United States or violate some right protected by the National Constitution. The power here referred to is, to use the words of Chief Justice Shaw, the power to make, ordain and establish all manner of wholesome and reasonable laws, statutes and ordinances, either with penalties or without, not repugnant to the Constitution, as they shall judge to be for the good and welfare of the Commonwealth and of the subjects of the same," citing Commonwealth v. Alger, 7 Cush. 53, 85.

Section 2 of Article 3 of the Constitution of the United States provides that "the judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made under their authority; to all cases affecting Ambassadors, public Ministers and Consuls; to all cases of admiralty and maritime jurisdiction"—yet the Supreme Court of Appeals of Virginia in Hagan v. City of Richmond, decided that the City had concurrent jurisdiction with the United States in cases of admiralty and maritime jurisdiction, in so far as it affects the making and enforcing of all manner of reasonable and wholesome laws for the well-being of its citizens. See also Faust v. City of Cleveland, Circuit Court of Appeals, Sixth Circuit, 121 Fed. 840, 59 C. C. A. 194.

Quoting further from Hagan v. City of Richmond, the Supreme Court of Appeals of Virginia says, "But we find abundant authority to sustain the concurrent jurisdiction of the Federal and State Governments in this class of cases," the doctrine is thus stated by Ray in his work on negligence of imposed duties, at pages 483-484: "So long as the State legislation is not in conflict with any law passed by Congress in pursuance of its powers, and is merely intended and operates, in fact, to aid commerce, and to expedite instead of hindering the safe transportation of persons and commodities from one Commonwealth to another, it is not repugnant to the Constitution of the United States, and will be enforced either as supplementary to partial Federal statutes relating to the same subject,

or in lieu of such legislation, where Congress has not exercised its power at all." The foregoing cases are decided wherein there are two enactments upon the same subject, one by the Federal Government and one by the State Government.

It is respectfully submitted that if there is any enactment by the Federal Government for the failure of a Telegraph Company to promptly deliver a telegram, it has not been unearthed by the appellant. If there were such a statute, then the Act of Congress would be paramount. Where Congress has failed to exercise the power it has in such cases, which are for the well-being of the citizens of the Commonwealth, it is respectfully contended (relying upon the authorities above quoted) that the State has the right to enact and enforce such legislation. In this case Congress has not exercised its power at all. The State has a statute which provides for what Congress has failed to declare itself upon, therefore has declared what penalty shall be paid by a Telegraph Company for the failure to promptly deliver a telegram, an enactment which has been repeatedly held by the Supreme Court of Appeals of Virginia, to be in aid of commerce, and a wholesome law for the well-being of its citizens, 94 Va. 272, 90 Va. 299, 94 Va. 513, 90 Va. 297, 100 Va. 459, 103 Va. 742.

In the case of Foley v. Schriver, 81 Va. 568, relied upon by the appellant, it is respectfully contended that different circumstances altogether exist, that the decision in that case could be upheld without prejudice to the issues involved in this case. That was a foreign attachment sued out in Elizabeth City County, wherein the plaintiff attempted to subject the funds in the hands of the "National Soldiers' Home for Disabled Volunteer Soldiers" to the payment of their claim. The Court held in that case:

"The officers of the said 'The National Home for Disabled Volunteer Soldiers' are disbursing officers of the United States Government, and the money in their hands as such, appropriated by Act of Congress, for public uses, is the money of the United States, until applied to the designated ends, and cannot be reached by garnishment process in the hands of the public officers, nor subject to attachment," citing Buchanan v. Alexan-

der, 4 Howard 20; Tracy v. Hornbucker, 8 Bush. 336; Buckley v. Eckhert, 3 Penn. 368; Chesley v. Brewer, 7 Mass. 259.

It is respectfully contended that this is a very different case from 122 U. S. 347 and such other cases as hold that the laws of Virginia cannot compel a Telegraph Company to deliver a message in Maryland, or vice versa.

If it be conceded that the United States has the right of exclusive legislation, ut res magis valeat quam pereat, this Court is bound to give the act a different construction, if it can, Ft. L. R. Co. v. Lowe 114 U. S., page 267, but has failed to exercise that right and the State Government has exercised its right to legislate for the protection and welfare of her citizens, which legislation incidentally touches upon such an exclusive right as the Federal Government only possesses, then the law of the State, which is not forbidden by its own Constitution or by the Constitution of the United States, prevails, C. R. I. & P. RR. v. Wm. McGlinn 114 U. S., page 272, L. Edition, Lake Shore & M. S. RR. Co. v. Ohio 173 U. S., 707 L. Edition, Commonwealth v. Drewery 15 Grat., 1, 5; 8 Cyc. 774-775. And we have seen that Congress has failed to declare itself upon this subject.

The decision of the Court of Appeals of Virginia, or so much thereof as is necessary, says:

> The ground upon which it is claimed that the act is unconstitutional is that the United States has exclusive legislative jurisdiction over the territory embraced within the limits of the Norfolk Navy Yard, formerly the Gosport Navy Yard, acquired by purchase under the provisions of Acts of Assembly passed January 25th, 1800, and February 27th, 1833, Acts 1800, page 246, chapter 64; Acts 1832-1833, page 25, chapter 33.
>
> If it be conceded that the United States has this exclusive legislative jurisdiction over the Norfolk Navy Yard, as claimed by the counsel of the Telegraph Company, what provision in either the Federal or State Constitution expressly or impliedly inhibits the General Assembly from imposing the penalty in question?
>
> It was conceded in oral argument (and if it had not been we think it is clear) that the statute is not in conflict with the commerce clause of the Federal Con-

stitution. Articles 1-8, clause 3. The statute, as applied to the facts of this case, does not in any way attempt to regulate commerce with a foreign nation, among the States, nor among the Indian tribes.

We have been cited to no provision in either Federal or State Constitutions, nor have we found any, which prohibits the legislation in question. The Telegraph Company was doing business in the State. The contract to deliver was made in the State. The fact that the message was to be delivered at a point over which the State had no legislative jurisdiction would not render the act unconstitutional unless forbidden (which, as we have seen, it was not) by the Federal or State Constitution; for it is well settled that all subjects of legislation not prohibited by the Federal or State Constitutions are within the discretion of the General Assembly. Commonwealth v. Drewery, 15 Grat. 1-5; 8 Cyc., 774-775.

The imposition of a penalty upon a telegraph company for failure to deliver a message at any point within the territorial limits of a State does not seem to us to be unjust, but, if it were, the remedy is with the General Assembly, and not with the Courts.

The judgment complained of must be affirmed."

The judgment complained of seems entirely correct and should be affirmed.

Respectfully submitted,

W. D. STOAKLEY,

For Defendant in Error.